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EXAMINER

PUENTE, EMERSON C

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2113

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/991,020
Filing Date: November 15, 2001
Appellant(s): SUTTON, CHRISTOPHER K.

Morley C. Tobey, Jr.
Reg. No. 43,955
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 15, 2005 appealing from the Office action mailed November 24, 2004.

RL

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

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The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-19 and 21-24 are rejected under 35 U.S.C. 102. Claim 20 is rejected under 35 U.S.C. 103.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-19 and 21-24 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,134,674 of Akasheh.

In regards to claim 1, Akasheh discloses a product that provides a test executive program for controlling a test on a device, said product comprising a media readable by said processing unit that stores said instructions and instructions for directing a processing unit to:

receive a selected one of a plurality of previously created alternative specifications for assessing a datapoint generated by a test, wherein each of the plurality of alternative specifications is a different specification for assessing the datapoint. Akasheh discloses a test file which stores associated tolerances for testing (see column 2 lines 52-54) and further states the user may select various test tolerance criteria in the setup mode (see column 9 lines 16-18). Akasheh further discloses a setup window (see figure 3c and column 11 lines 20-46). In the setup window, there is a voltage setting, wherein the user may set the voltage parameter (see figure 3c “Voltage” and column 11 lines 32-34). The different floating point parameters in which the user can set the voltage constitute the “plurality of previously created alternative specifications”. The value in which the user sets the voltage setting constitutes the “selected one of a plurality of previously created alternative specification”. Akashesh further discloses the instrument receiving the parameter (see column 11 lines 37-42), indicating receiving a selected one of the plurality of previously created alternative specification.

and apply said selected specification to said datapoint generated by said test. Akasheh discloses the ability to compare test results (a datapoint generated by a test) with user selected test tolerance data (alternative specifications) (see column 7 lines 1-5). Akashesh further states after setting the criteria, the test program is run to test the UUT with instrument(s). After completion of the test, the TM compares the reading from instrument(s) with the criteria or parameter predetermined in the setup mode (see column 7 lines 25-35), indicating applying said selected specification to said data point.

In regards to claim 2, Akasheh discloses:

instructions for directing said processing unit to receive a request for a display of said plurality of specifications available, determine said plurality of specifications available, and display said plurality of specifications. Akasheh discloses a plurality of operation modes, including a setup mode (see column 11 lines 43-46). When the set up mode is selected, the setup window (see figure 3c) is display, which includes a plurality of specifications available (see figure 3c; DC Voltage (V) >12.00 V and < 14.00 V). Thus, the selection of the set up mode constitute as a request of said plurality of specifications available. Furthermore, the setup window determines and displays the plurality of specifications available, indicating determining said plurality of specifications available and displaying said plurality of specifications.

In regards to claim 3, Akasheh discloses said request comprises the selection of an option of a displayed menu. Akasheh discloses the instrument interface module (IMM) can operate in three modes: a setup mode, execution mode, and virtual panel mode (see figure 3d and column 11 lines 43-46). Each of the plurality of operation modes constitutes an option of a displayed menu.

In regards to claim 4, Akasheh discloses said plurality of specifications available is displayed on a menu. Akasheh discloses the setup window displaying a plurality of specifications available on a menu (see figure 3c; DC Voltage (V) >12.00 V and < 14.00 V).

In regards to claim 5, Akasheh discloses said received selected specification is received as a choice from said menu of said plurality of specifications available. Akasheh further discloses plurality of specifications available on a menu (see figure 3c) and entering input values to be stored (see column 11 lines 20-25).

In regards to claim 6, Akasheh discloses said instructions for determining said plurality of specifications available comprises instructions for directing said processing unit to determine said device being tested. Akashash discloses a process or instructions invokes by the TPE for directing the processing unit to determine the UUT being tested. Akashash discloses a process or instructions checking whether UUT have been defined and checking whether there are more than one UUT. If so, the process instructs the user to select one and if there is only one UUT, then that UUT is automatically selected (see column 16 lines 35-40), indicating instructions for directing said processing unit to determine said device being tested.

In regards to claim 7, Akasheh discloses said instructions for determining said plurality of specifications available comprises instructions for directing said processing unit to determine said test being applied to said device. Akashash discloses the TPE instructing a user to make the selection of an instrument for testing the UUT (see column 12 lines 20-30). The selection of the instrument by the user will result in instruction by the TPE for said processing unit to determine said test being applied to said device.

In regards to claim 8 and 21, Akasheh discloses providing a test executive program that controls a test applied to a device, comprising:

receiving a selected one of a plurality of previously created alternative specifications for assessing a datapoint generated by a test, wherein each of the plurality of alternative specifications is a different specification for assessing the datapoint. Akasheh discloses a test file, which stores associated tolerances for testing (see column 2 lines 52-54) and further states the user may select various test tolerance criteria in the setup mode (see column 9 lines 16-18).

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Akashesh further discloses a setup window (see figure 3c and column 11 lines 20-46). In the setup window, there is a voltage setting, wherein the user may set the voltage parameter (see figure 3c "Voltage" and column 11 lines 32-34). The different floating point parameters in which the user can set the voltage constitute the "plurality of previously created alternative specifications". The value in which the user sets the voltage setting constitutes the "selected one of a plurality of previously created alternative specification". Akashesh further discloses the instrument receiving the parameter (see column 11 lines 37-42), indicating receiving a selected one of the plurality of previously created alternative specification.

applying said selected specification to said datapoint generated by said test. Akashesh discloses the ability to compare test results (a datapoint generated by a test) with user selected test tolerance data (alternative specifications) (see column 7 lines 1-5). Akashesh further states after setting the criteria, the test program is run to test the UUT with instrument(s). After completion of the test, the TM compares the reading from instrument(s) with the criteria or parameter predetermined in the setup mode (see column 7 lines 25-35), indicating applying said selected specification to said data point.

In regards to claim 9 and 22, Akashesh discloses:

receiving a request for a display of said plurality of specifications available, determining said plurality of specifications available, and displaying said plurality of specifications. Akashesh discloses a plurality of operation modes, including a setup mode (see column 11 lines 43-46). When the set up mode is selected, the setup window (see figure 3c) is display, which includes a plurality of specifications available (see figure 3c; DC Voltage (V) >12.00 V and < 14.00 V). Thus, the selection of the set up mode constitute as a request of said plurality of specifications

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available. Furthermore, the setup window determines and displays the plurality of specifications available, indicating determining said plurality of specifications available and displaying said plurality of specifications.

In regards to claim 10, Akasheh discloses wherein said request is a selection of an option of a displayed menu. Akasheh discloses the instrument interface module (IMM) can operate in three modes: a setup mode, execution mode, and virtual panel mode (see figure 3d and column 11 lines 43-46). Each of the plurality of operation modes constitutes an option of a displayed menu.

In regards to claim 11, Akasheh discloses wherein said plurality of specifications available is displayed on a menu. Akasheh discloses the setup window displaying a plurality of specifications available on a menu (see figure 3c; DC Voltage (V) >12.00 V and < 14.00 V).

In regards to claim 12, Akasheh discloses receiving selected specification is received as a choice from said menu of said plurality of specifications available. Akasheh further discloses plurality of specifications available on a menu (see figure 3c) and entering input values to be stored (see column 11 lines 20-25).

In regards to claim 13 and 23, Akasheh discloses determining said plurality of specifications available comprises the step of determining said device being tested. Akashash discloses a process or instructions invokes by the TPE for directing the processing unit to determine the UUT being tested. Akashash discloses a process or instructions checking whether UUT have been defined and checking whether there are more than one UUT. If so, the process instructs the user to select one and if there is only one UUT, then that UUT is automatically

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selected (see column 16 lines 35-40), indicating instructions for directing said processing unit to determine said device being tested.

In regards to claim 14 and 24, Akasheh discloses determining said plurality of specifications available comprises determining said test being applied to said device Akashash discloses the TPE instructing a user to make the selection of an instrument for testing the UUT (see column 12 lines 20-30). The selection of the instrument by the user will result in instruction by the TPE for said processing unit to determine said test being applied to said device.

In regards to claim 15, Akasheh discloses updating a display of results from said test compared to said selected specification (see column 14 lines 15-20).

In regards to claim 16, Akasheh discloses a storing medium storing a test to be performed on a product other than said test system, a plurality of test datapoints resulting from said test, and a plurality of sets of previously created alternative specifications for accessing said datapoints, wherein each of the plurality of alternate specifications is a different specification for assessing the datapoint and an input device for selecting one of said sets of alternative specifications. Akasheh discloses a test file which stores associated tolerances for testing (see column 2 lines 52-54) and further states the user may select various test tolerance criteria (see column 9 lines 16-18). Akasheh further discloses a setup window (see figure 3c and column 11 lines 20-46). In the setup window, there is a voltage setting, wherein the user may set the voltage parameter (see figure 3c "Voltage" and column 11 lines 32-34). The different floating point parameters in which the user can set the voltage constitute the "plurality of previously created alternative specifications for assessing said

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datapoint". The value in which the user sets the voltage setting constitute "selecting one of said sets of alternative specification".

a processor responsive to said input device for receiving said set of specifications and comparing them with said datapoints and an output device for presenting the results of said comparison. Akashesh discloses after setting the criteria, the test program is run to test the UUT with instrument(s). After completion of the test, the TM compares the reading from instrument(s) with the criteria or parameter predetermined in the setup mode, indicating receiving said set of specifications and comparing them with said datapoints (see column 7 lines 27-33) and return a pass or fail message (see column 7 lines 32-34), indicating an output device for presenting the results of said comparison.

In regards to claim 17, Akasheh discloses wherein said input device comprises a menu on a display and a manual device for selecting an item on said menu (see column 11 lines 20-53).

In regards to claim 18, Akasheh discloses wherein said output device comprises a display (see column 7 lines 32-34).

In regards to claim 19, Akasheh discloses wherein said storing medium comprises an electronic memory (see column 5 line 50).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akasheh in view of Applicant's Admitted Prior Art, referred hereinafter "AAPA".

In regards to claim 20, Akasheh discloses stored test includes an operational test (see column 1 lines 16-25), but fails to explicitly disclose an environmental test

AAPA discloses complex electronic, electro-mechanical, and mechanical devices are generally tested using automated test system, including environmental tests which expose the DUT to various combinations of temperature, pressure, and humidity (see page 1 of specifications, lines 11-17).

It would have been obvious to one of ordinary skill in the art at the time the invention was made wherein stored test include an environmental test. A person of ordinary skill in the art would have been motivated because Akasheh discloses performing tests to ensure that a product meets or exceeds operational requirements and specified tolerances, and an environmental test, as per teaching of AAPA, is a well know test to determine environmental changes, thus enabling one to determine if the product meets or exceeds operational requirement and specified tolerances at various combinations of temperature, pressure, and humidity (see page 1 of specifications, lines 11-17).

(10) Response to Argument

1.1 Regarding Rejection of Independent Claims 1,8, & 21 Under 35 USC § 102(e):

In response to applicant's argument: "Applicant maintains that Akasheh does NOT disclose receiving a selected 'one of a plurality of previously created alternative specifications'

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which can be used for a particular datapoint. In Akasheh each of the instruments 112.sub.1 ... 112.sub.N individually measures a separate item analogous to a datapoint of the Present Application and each of the instruments 112.sub.1 112.sub.N individually uses its ONE AND ONLY specified criteria for evaluation of its datapoint. The criteria for each of the instruments is NOT selected from ALTERNATIVE specifications,”(see page 8 middle paragraph) examiner respectfully disagrees.

The claim limitation cites: “receive a selected one of a plurality of previously created alternative specifications for accessing a datapoint generated by a test, wherein each of the plurality of alternative specifications is a different specification for accessing the datapoint.” Akasheh discloses a setup window (see figure 3c and column 11 lines 20-46). In the setup window, there is a voltage setting, wherein the user may set the voltage parameter (see figure 3c “Voltage” and column 11 lines 32-34). The different floating point parameters in which the user can set the voltage constitute the “plurality of previously created alternative specifications”. The value in which the user sets the voltage setting constitutes the “selected one of a plurality of previously created alternative specification”. Akashesh further discloses the instrument receiving the parameter (see column 11 lines 37-42), indicating receiving a selected one of the plurality of previously created alternative specification. In addition, Akashesh discloses after setting the criteria, the test program is run to test the UUT with instrument(s). After completion of the test, the TM compares the reading from instrument(s) with the criteria or parameter predetermined in the setup mode (see column 7 lines 25-35), indicating applying said selected specification to said data point. Examiner maintains his rejection.

1.2 Regarding Rejection of Dependent Claims 2, 9, 15, & 22 Under 35 USC § 102(e):

In response to applicant's argument "Further, Akasheh does NOT 'receive a request for a display of said plurality of specifications available, determine said plurality of specifications available, and display said plurality of specifications' since there are not a plurality of specifications to display and from which to apply. In Akasheh any such specifications are entered individually. A request is not received for such a display of a plurality of specifications that are available. Neither is a determination made as to which plurality of specifications are available. Nor is a display of such a plurality of specifications displayed, "(see page 9 second paragraph) examiner respectfully disagrees.

Akasheh discloses a plurality of operation modes, including a setup mode (see column 11 lines 43-46). When the set up mode is selected, the setup window (see figure 3c) is display, which includes a plurality of specifications available (see figure 3c; DC Voltage (V) >12.00 V and < 14.00 V). Thus, the selection of the set up mode constitute as a request of said plurality of specifications available. Furthermore, the setup window determines and displays the plurality of specifications available, indicating determining said plurality of specifications available and displaying said plurality of specifications. Examiner maintains his rejection.

1.3 Regarding Rejection of Dependent Claims 3 and 10 Under 35 USC § 102(e):

In response to applicant's argument "The Final Office Action of 24 November 2004 referenced column 11 lines 42-53 and Figure 3d of Akasheh in rejecting claim 3. However, these lines and figure in Akasheh refer to an instrument interface module (IIM) that can operate "in three modes: a set-up mode, an execute mode and a virtual panel mode." They do NOT

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refer to the receipt of a request for display of a plurality of specifications." as in claim 3 of the Present Application," (see page 10 second paragraph) examiner respectfully disagrees.

Akashch discloses the instrument interface module (IMM) can operate in three modes: a setup mode, execution mode, and virtual panel mode (see figure 3d and column 11 lines 43-46). Each of the plurality of operation modes constitutes an option of a displayed menu. When the set up mode is selected, the setup window (see figure 3c) is display, which includes a plurality of specifications available (see figure 3c; DC Voltage (V) >12.00 V and < 14.00 V). The selection of the set up mode constitute as a request for display of a plurality of specifications available. Examiner maintains his rejection.

1.4 Regarding Rejection of Dependent Claims 4 and 11 Under 35 USC § 102(e):

In response to applicant's argument "The Final Office Action of 24 November 2004 referenced column 13 lines 51-57 and Figure 8 of Akashch in rejecting claim 4. However, these lines and figure in Akashch refer to a single tolerance condition for any given parameter. They do NOT refer to the display on a menu of a plurality of specifications as in claim 4 of the Present Application," (see page 11 top paragraph)

Akashch further discloses the setup window displaying a plurality of specifications available on a menu (see figure 3c; DC Voltage (V) >12.00 V and < 14.00 V), indicating the plurality of specification available is displayed on a menu. Examiner maintains his rejection.

1.5 Regarding Rejection of Dependent Claims 5 and 12 Under 35 USC § 102(e):

In response to applicant's argument "The Final Office Action of 24 November 2004 referenced column 13 lines 51-57 of Akasheh in rejecting claim 5. However, these lines in Akasheh refer to a single tolerance condition for any given parameter. They do NOT refer to the reception of a choice from a menu of a plurality of specifications that are available," (see page 11 third paragraph from bottom) examiner respectfully disagrees.

Akasheh further discloses plurality of specifications available on a menu (see figure 3c) and entering input values to be stored (see column 11 lines 20-25), indicating a choice from said menu of said plurality of specifications available. Examiner maintains his rejection.

1.6 Regarding Rejection of Dependent Claims 6, 13, and 23 Under 35 USC § 102(e):

In response to applicant's argument "The Final Office Action of 24 November 2004 referenced column 16 lines 25-40 of Akasheh in rejecting claim 6. However, these lines in Akasheh refer to a user making a selection. They do NOT refer to directing a processing unit to determine the device being tested," (see page 12 fourth paragraph from bottom) examiner respectfully disagrees.

Akashash discloses a process or instructions invokes by the TPE for directing the processing unit to determine the UUT being tested. Akashash discloses a process or instructions checking whether UUT have been defined and checking whether there are more than one UUT. If so, the process instructs the user to select one and if there is only one UUT, then that UUT is automatically selected (see column 16 lines 35-40), indicating instructions for directing said processing unit to determine said device being tested. Examiner maintains his rejection.

1.7 Regarding Rejection of Dependent Claims 7, 14, and 24 Under 35 USC § 102(e):

In response to applicant's argument "The Final Office Action of 24 November 2004 referenced column 12 lines 25-30 of Akasheh in rejecting claim 7. However, these lines in Akasheh refer to a user making a selection. They do NOT refer to directing a processing unit to determine the test being applied to a device," (see page 13 second paragraph) examiner respectfully disagrees.

Akashash discloses the TPE instructing a user to make the selection of an instrument for testing the UUT (see column 12 lines 20-30). The selection of the instrument by the user will result in instruction by the TPE for said processing unit to determine said test being applied to said device. Examiner maintains his rejection.

1.8 Regarding Rejection of Independent Claims 16 & Dependent Claims 17 & 19 Under 35 USC § 102(e):

In response to applicant's argument: "Applicant maintains that Akasheh does NOT disclose receiving a selected "one of a plurality of previously created alternative specifications" which can be used for a particular datapoint. In Akasheh each of the instruments 112.sub.1 ... 112.sub.N individually measures a separate item analogous to a datapoint of the Present Application and each of the instruments 112.sub.1 112.sub.N individually uses its ONE AND ONLY specified criteria for evaluation of its datapoint. The criteria for each of the instruments is NOT selected from ALTERNATIVE specifications,"(see page 14 bottom paragraph) examiner respectfully disagrees.

Akashesh discloses a setup window (see figure 3c and column 11 lines 20-46). In the setup window, there is a voltage setting, wherein the user may set the voltage parameter (see figure 3c “Voltage” and column 11 lines 32-34). The different floating point parameters in which the user can set the voltage constitute the “plurality of previously created alternative specifications for assessing said datapoint”. The value in which the user sets the voltage setting constitute “selecting one of said sets of alternative specification”. Furthermore, Akashesh discloses after setting the criteria, the test program is run to test the UUT with instrument(s). After completion of the test, the TM compares the reading from instrument(s) with the criteria or parameter predetermined in the setup mode, indicating receiving said set of specifications and comparing them with said datapoints (see column 7 lines 27-33) and return a pass or fail message (see column 7 lines 32-34), indicating an output device for presenting the results of said comparison.

2.1 Regarding Rejection of Dependent Claims 20 Under 35 USC § 103(a):

In response to applicant’s argument “With respect to the rejection of claim 20 under 35 U.S.C. j 103(a), it is noted that dependent claim 20 depends from independent claim 16 and that, as such, dependent claim 20 has all the features described above for claim 16 as elements. As demonstrated above, among other items, Akashesh does not disclose a storing medium storing ‘a plurality of sets of previously created alternative specifications for accessing said datapoints, wherein each of the plurality of alternative specifications is a different specification for assessing the datapoint’ which is an element of claim 16 of the Present Application. Nor does the alleged VIAPA disclose such. Nor does the alleged AAPA disclose or imply an environmental test,” (see page 16 top paragraph) examiner respectfully disagrees.

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Akashesh discloses a setup window (see figure 3c and column 11 lines 20-46). In the setup window, there is a voltage setting, wherein the user may set the voltage parameter (see figure 3c “Voltage” and column 11 lines 32-34). The different floating point parameters in which the user can set the voltage constitute the “plurality of previously created alternative specifications”. The value in which the user sets the voltage setting, in this case “13”, constitute the “selected one of a plurality of previously created alternative specification”. Akashesh further discloses the instrument receiving the parameter (see column 11 lines 37-42), indicating receiving a selected one of the plurality of previously created alternative specification. In addition, Akashesh discloses after setting the criteria, the test program is run to test the UUT with instrument(s). After completion of the test, the TM compares the reading from instrument(s) with the criteria or parameter predetermined in the setup mode (see column 7 lines 25-35), indicating applying said selected specification to said data point. Furthermore, AAPA disclose complex electronic, electro-mechanical, and mechanical devices are generally tested using automated test system, including environmental tests which expose the DUT to various combinations of temperature, pressure, and humidity (see page 1 of specifications, lines 11-17), indicating an environmental test. Examiner maintains his rejection.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,



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